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Rosser and Arnold Oppose Each Other

Luther Rosser and Reuben Arnold, Frank’s attorneys Friday opposed each other in the Federal Court when the Texas Oil Company filed a bill of equity to prevent T. E. Purcell from pushing his case in the Fulton County Court.

Rosser is representing the Texas Company and Arnold appears for Purcell. Purcell alleges he made a contract with the Texas company for 49,000 barrels of gasoline the company failed to deliver. The price advanced and Purcell claims he could have made a quarter of a million profit.

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Frank Files Reasons for New Trial

PHAGAN CASE IN SUPREME COURT

Argument To Be Set for Decem-

ber 15 and Final Decision May

Be Made by March.

All doubt as to when the arguments will be heard by the Supreme Court in the Frank case was set at rest Saturday, when

the bill of exceptions, properly certified, was filed with the clerk of the court for record.

This means the case will go on the calendar for argument on December 15, although actual argument may not be heard for three or four days thereafter.

Arguments in the case may be made either orally and by brief, or by brief alone. If oral arguments are made, the hearing likely will take several days. If briefs are relied upon entirely, however, the hearing will be exceedingly short and non-spectacular.

Following the submitting of arguments the court of review will take the case under advisement for such length of time as it deems necessary, not to exceed twelve months, however. If the case takes the usual course a final ruling may be looked for about March.

If the verdict and rulings of the lower court are affirmed as matters of law, the case ends so far as the State of Georgia is concerned, and the execution of the defendant in the trial record alone will be necessary to close the case.

If the case is reversed, it will go back to the lower court for retrial, exactly as if it had never been tried, and likely will come on for trial again in July of next year.

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LEO FRANK FILES

REASONS FOR NEW TRIAL

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Editorial Comment on the Frank Case

A STRANGE RULING.

Editorial in Memphis (Tenn.)

Commercial Appeal.

In overruling the motion for a new trial in the Frank case in Atlanta, Ga., it is stated that the judge, Mr. Roan, made the following announcement from the bench:

“I have given this question long consideration. It has given me more concern than any other case I ever was in. And I want to say here that, although I heard the evidence and the arguments during those 30 days, I do not know this morning whether Leo Frank is innocent or guilty. But I was not the one to be convinced. The jury was convinced, and I must approve their verdict and overrule the motion.”

Frank had been convicted of murder. The verdict was returned by a jury of twelve men. Motion was made for a new trial, and after arguments were in the statement quoted is said to have been made by the court.

This statement of the judge we submit to lawyers skilled in matters of criminal procedure in the belief that they, from the legal point of view, will agree that the judge should have ordered a new trial.

We think that lawyers hold to the principle that in a motion for a new trial the court becomes, as it were, a juror, and unless he is a convinced beyond a reasonable doubt of the guilt a reasonable doubt of the guilt of the accused, he must grant a new trial.

If a judge sustains a verdict rendered by a jury, he then becomes equal to the jury as a supporter of that verdict. If the judge, then, is a supporter of a verdict, he is in an illogical position if he does not know whether the accused is innocent or guilty, or that the verdict is right or wrong.

If the evidence is not sufficient to let his mind rest easily on the accuracy of the guilty verdict, then he is in a bad way in sustaining it.

Looking at this statement by the judge from the logical point of view of the layman, an analysis of it is interesting.

“I do not know this morning whether Leo Frank is innocent or guilty,” says the judge.

In the everyday affairs of life, when we do not know that a man is bad, we must resume that the man is good. The presumption of a man’s goodness of character goes with him everywhere.

If, after hearing all the evidence, this judge does not know, then he is in a state of doubt. If he is in a state of doubt, he is uncertain. If he is uncertain, his mind is fixed on nothing, and if his mind is fixed on nothing, his mind is incapable of acting in any orderly manner.

If the judge, in overruling the motion for a new trial, did not know whether the man was guilty or not guilty, his act was similar to that of an infant or an insane person, because he did a thing without a reasonable cause.

In this case it does seem that it was the duty of the judge, failing to be convinced one way or the other, to declare the trial no trial, because so far as his mind was concerned it was no trial, for it settled nothing in his mind.

In the last sentence of his statement the judge says: “But I was not the one to be convinced. The jury was convinced, and I must approve their verdict and overrule the motion.” The judge, then, apparently bases his act upon the act of the jury. He then should not have permitted the lawyers to consume time in arguing for a new trial.

In effect he states that the jury’s verdict was a finality with him, regardless of what he thought or didn’t think. Therefore, he should have saved the attorneys for both sides the labor of preparing briefs for and against a rehearing.